Kesang Leasing Sdn Bhd v Mohd Yusof bin Ismail & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R8-11-10-89
EUSOFF CHIN J
20 SEPTEMBER 1989

Hire Purchase — Agreement — Applicability of Hire-Purchase Act 1967 to hire-purchase agreement where subject matter of agreement is not specified in sch 1 — Hire-Purchase Act 1967, s 1(2) & sch 1 — Courts of Judicature Act 1964, s 28

The appellant, Kesang Leasing Sdn Bhd, and the first respondent entered into a hire-purchase agreement for the hire of a unit of personal computer. The second respondent entered into a guarantee agreement pursuant to the above-mentioned agreement to indemnify and guarantee the appellant on all loss, charges and expense which may be sustained by reason of the first respondent's neglect to observe or perform any of the conditions in the above-mentioned agreement.

The first respondent failed to keep up with his repayment schedule whereupon the appellant brought an action against the first respondent and the second respondent as guarantor. The learned magistrate held that the transaction that took place was not a hire-purchase transaction because the subject matter of the agreement, ie a computer, did not fall under the first schedule of the Hire-Purchase Act 1987 ('the Act'). Hence, the claim was dismissed on the ground that it was brought under the Act which did not apply to the hire-purchase agreement between the appellant and the first respondent.

Held, allowing the appeal with costs:

(1) The object and purpose of the Act are to regulate the form and contents of hire-purchase agreements and the rights and duties of parties to such agreements.

(2) Subsection 1(2) of the Act does not exclude the application of the provisions of the Act to hire-purchase agreements in respect of goods not specified in the first schedule if the parties to the agreements have agreed to be bound by the provisions of the Act.

Legislation referred to
Hire-Purchase Act 1967 s 1(2), sch 1
Court of Judicature Act 1964 s 28

WY Yuen (Miss) for the appellant.
Respondents not represented.

Cur Adv Vult

Eusoff Chin J: This is an appeal by the plaintiff/appellant against the dismissal of his claim against the defendants by the magistrate on 28 November 1987. The facts are that on or about 8 May 1986, the plaintiff and the first defendant/respondent entered into a hire-purchase agreement dated 8 May 1986 for the hire of one unit of a Houston Micro Personal computer 640 KBC/W dual drive ('the computer') with a unit of a Green Monitor, serial number 10392 and 3102.

Further, on or about 8 May 1986, pursuant to the abovesaid agreement the plaintiff and the second defendant/respondent entered into a guarantee agreement dated 8 May 1986 whereby the second defendant agreed to guarantee and indemnify the plaintiff on all loss, charges and expense which may be sustained by reason of the first defendant or borrower's neglect to observe or perform any of the conditions in the abovesaid hire-purchase agreement.

The plaintiff's claim is for the sum of $1,022.50, full particulars of which are:

Cash price			$ 2,913
Less: down payment			913
Amount financed			$ 2,000
Add: term charges			439.84
			$ 2,439.84
Less instalments paid (4 x 101.66)			406.64
			$ 2,033.20
Less: rebate on term charges as at 18 December 1986			199.37
			$ 1,833.83
Add: late charges as at 18 December 1986			$ 16.03
advertisement for sale of computer			30.40
insurance			3.24
storage charges (from 18 December 1986 to 7 March 1987 at $5 per day)			400
			$ 2,283.50
Less: sale proceed	$1,300		
deduct 3% overhead selling expenses	39		1,261
Amount outstanding			$ 1,022.50

The first defendant had basically failed to keep up with his repayment schedule and in fact had only made four instalments before the said computer was repossessed. The said computer was sold to the highest bidder for $1,300 after the said unit was advertised in the newspaper.

The learned magistrate held in her written judgment that the transaction that took place was not that of a hire-purchase transaction, the reason being that the subject matter of the agreement, ie a computer, did not fall under first schedule of the Hire-Purchase Act 1967 ('the Act') and is outside the preview of the Act. The magistrate held that the Act did not apply to the hire-purchase agreement between the plaintiff and the defendant because the computer is not an item listed under the first schedule of the Act.

The magistrate held that the claim should be dismissed because it was brought under the Act. I think the magistrate had misdirected herself here as the plaintiff did not in the statement of claim say that it is a claim under the Act. Since the amount claimed does not exceed $10,000,

the appeal is essentially on a point of law as provided under s 28 of the Court of Judicature Act 1964.

The object and purpose of the Act is to regulate the form and contents of hire-purchase agreements and the rights and duties of parties to such agreements. By sub-s 1(2) of the Act, the provisions of the Act 'shall apply in respect only of hire-purchase agreements relating to the goods specified in the first schedule'. This certainly does not exclude the application of the provisions of the Act to hire-purchase agreements in respect of goods not specified in the first schedule if the parties to the agreement have agreed to be bound by the provisions of the Act. In other words, in respect of goods not specified in the first schedule to the Act, the parties are free to contract outside the provisions of the Act, or agree to be bound by those provisions.

In the appeal before me, the parties, in respect of the computer, had agreed in their hire-purchase agreement, to be bound by the provisions of the Act. It is in fact a hire-purchase agreement designed for use in respect of goods listed in the first schedule to the Act, but adopted and agreed to by the parties to be used in respect of the purchase of the computer. I do not think that because of this, the hire-purchase agreement is void. Indeed, such a hire-purchase agreement operates to the advantage of the hirer (the first respondent). From the record, it appears that there is no dispute as to whether the provisions of the Act had been infringed by the plaintiff. I therefore allow this appeal with costs, set aside the order of the magistrate, and enter judgment for the plaintiff/appellant for $1,022.50, and costs.

Appeal allowed.

Solicitors: *Nordin Hamid & Co.*

Report by *Wong Kim Fatt*

Canopee Investment Pte Ltd & Ors v Landmarks Holdings Bhd & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D2-22-79-87
VC GEORGE J
19 SEPTEMBER 1989

Civil Procedure — Taxation of costs — Getting-up item — Starting point in exercise of discretion — Whether subject matter of action involved novel or uncommon questions of law — Reference made to judgment and issues before the court — Subordinate Courts Rules 1980, O 48 r 12

This was a review of the amount that was allowed for getting-up by the deputy registrar. The plaintiffs had earlier obtained an interim ex parte injunction which the defendants had succeeded in discharging. The defendants asked for $15,000 for getting-up but the learned deputy registrar taxed it down to $1,500 and on review increased the amount to $2,000. He stated in his certificate that there were no novel questions involved requiring specialized knowledge. However, the judge who disposed of the application pointed out that the matter involved a point of law which counsel told him had not been decided in any reported case in Malaysia or abroad.

Held, allowing $12,500 for getting-up:

(1) A starting point in considering the exercise of discretion, particularly for the item 'getting-up', could be the fixed scale of costs set out in O 48 r 12 of the Subordinate Courts Rules 1980. The fixed cost in the scale is in proportion to the quantum of the subject matter of the action. A taxing officer of the High Court would be well advised to give a monetary value to the action if at all that is possible and when that has been done, to apply the Subordinate Courts Rules 1980 scale with adjustments using the policy of the grading system to reflect the quantum of the subject matter. For the purposes of taxation of costs, running down cases could be considered to be the simplest of cases and should attract for getting up the amount arrived at by applying the Subordinate Courts Rules 1980 scale. For the more complicated cases and those not as common, there should be a gradual scaling upwards of costs for getting-up.

(2) When it is not readily possible to give a monetary value to the subject matter of the action, the taxing officer should ask himself how much more or less getting-up has to be done in the case than would have been done in a running down action and use it as a guide to adjust the quantum.

(3) The judge who heard the application pointed out that the cause of action involved a point of law which counsel had told him had not been decided in any reported case in Malaysia or abroad. He had the benefit of the submissions of eminent counsel and from the judgment he was not prepared to say that the point was not novel. He was also grateful for the great assistance obtained by the extensive legal research conducted by the parties. Further, he had to consider a number of subordinate points including one side issue of obvious public importance which was the principles on which the court should be persuaded to hear a matter in camera. In the circumstances, the deputy registrar erred in holding that the case did not involve what could be considered novel or at worst uncommon questions of law.

Legislation referred to
Subordinate Courts Rules 1980 O 48 r 12